

# Notice of Allowability

## Application No.

09/899,595

## Examiner

Russell Kallis

## Applicant(s)

SPRUNCK ET AL.

## Art Unit

1638

### -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 4/1/2004.
2. ☒ The allowed claim(s) is/are 1-12, 15 (renumbered 1-13).
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                   |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>4/28/2004</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                                     |
|   | 9. <input type="checkbox"/> Other _____.  |

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Anne Marie Yvon on 4/29/2004.

The application has been amended as follows:

Claim 7 has been canceled.

In the specification:

On page 9, delete from line 11 to the end of the page.

Delete page 10.

On page 11, delete everything up to the beginning of line 2 and delete everything after line 4 and on line 4, after "from the group consisting of" insert --SEQ ID NO: 2, SEQ ID NO: 3, SEQ ID NO: 4, SEQ ID NO: 5, SEQ ID NO: 6, SEQ ID NO: 7, SEQ ID NO: 8, SEQ ID NO: 9 and SEQ ID NO: 10; and--.

Delete page 12.

On page 13, delete lines 1-25.

On page 29, lines 10-11, after "Internet" delete ", for example under the web site <http://www.ncbi.nlm.nih.gov/PubMed/medline.html>".

On page 29, line 13, after "for example" delete "on the web site <http://www.lycos.com>" and insert --using any known search engine--.

Art Unit: 1638

In the claims:

Claim 1 (currently amended). An isolated nucleic acid molecule with the function of a caryopsis-specific promoter, which nucleic acid molecule:

a) has [a] the nucleotide [nucleic acid] sequence of nucleotides 1-4683 of SEQ ID NO: 1;

or

b) comprises a functional portion of the nucleotide [nucleic acid] sequence stated under a), wherein the functional portion comprises bases 2241-4683 or 4071-4683 of SEQ ID NO: 1;

[c] with the nucleotide sequence stated under a under hybridization conditions comprising a hybridization temperature of 65-68°C, a wash temperature of 65-68°C, and a wash buffer salt concentration of 0.2X SSC; or

d) has about 90-95% identity with the sequence stated under a).]

Claim 6 (currently amended). A plant, fungal or bacterial host cell which is genetically modified with [a] the nucleic acid molecule as claimed in claim 1, with [an] the expression cassette as claimed in claim 3 [or with a vector as claimed in claim 4.], with a vector comprising the nucleic acid molecule as claimed in claim 1, or with a vector comprising the expression cassette as claimed in claim 3.

Claim 10 (currently amended). Propagation material or harvested material from plants as claimed in claim 9, [comprising plant cells as claimed in claim 8] wherein the material comprises said nucleic acid molecule.

Claim 11 (currently amended). A method of generating transgenic plant cells[ as claimed in claim 8], wherein plant cells[, plant tissue, plant parts or protoplasts] are transformed with [a] the nucleic acid molecule as claimed in claim[s] 1, [with a vector as claimed in claims 4,] with

Art Unit: 1638

[an] the expression cassette as claimed in claim 3[ or with a host cell as claimed in claim 6],  
with a vector comprising the nucleic acid molecule as claimed in claim 1, or with a vector  
comprising the expression cassette as claimed in claim 3, and wherein the transformed plant  
cells[, plant tissues, plant parts or protoplasts] are cultivated in a growth medium.

Claim 12 (currently amended). A method of generating transgenic plants[ as claimed in  
claim 9], wherein plant cells, plant tissue, plant parts or protoplasts are transformed with [a]  
the nucleic acid molecule as claimed in claim 1, [with a vector as claimed in claim 4,] with [an]  
the expression cassette as claimed in claim 3[ or with a host cell as claimed in claim 6], with a  
vector comprising the nucleic acid molecule as claimed in claim 1, or with a vector comprising  
the expression cassette as claimed in claim 3, and wherein the transformed plant cells, plant  
tissues, plant parts or protoplasts are grown in a growth medium, and regenerated into intact  
plants[ are regenerated from the obtained plant cells].

In Claim 15, line 2, after “as claimed in” change “claims” to --claim--.

In Claim 15, line 3, after “and” delete “the” and insert --a transformed--.


Art Unit: 1638

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell Kallis whose telephone number is (571) 272-0798. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on (571) 272-0804. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Russell Kallis Ph.D.  
April 28, 2004



**ASHWIN D. MEHTA, PH.D**  
**PATENT EXAMINER**